NO. 42342-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

HAIGEUN JUNG and HYOSUN JUNG,

Respondents,

v.

SANG TAE YOON and HYUN SUK YOON,

Appellants.

RESPONDENTS' BRIEF

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I. INTRODUCTION

In the spring of 2009, Appellants Sang Tae Yoon and Hyun Suk Yoon (collectively, "the Yoons") separately told at least two people that Respondent Hyosun Jung ("Mrs. Jung") had sex with any man who had money, and that she at some point in the recent past had become pregnant by a man who was not her husband and gone to South Korea to have an abortion. These allegations were false and made without any privilege. They were also malicious, as the Yoons knew that their claims were untrue, but chose to make them anyway. The allegations humiliated Mrs. Jung, caused her substantial emotional distress, and forced her and her husband, Respondent Haigeun Jung ("Mr. Jung"), to undertake a costly move from their prior residence. The Jungs subsequently sued the Yoons for defamation, and the matter proceeded to a bench trial in which the Yoons were *pro se*. At the trial, the Jungs presented clear and compelling evidence of malicious defamation, and the trial court entered judgment in their favor. It subsequently denied the Yoon's motion for a new trial.

This Court should affirm the trial court. The Yoons did not raise timely objections below to what they now allege were erroneous evidentiary rulings. More importantly, the Yoons' Opening Brief fails to assign error to most (if not all) of the trial court's findings of fact, rendering them verities on this appeal. Finally, even apart from such procedural flaws, the Yoons' appeal fails to identify any reversible error. There is substantial, clear, and compelling evidence in the record to support the trial court's findings that the Yoons maliciously defamed the

Jungs. The trial court properly applied the law to award the Jungs damages, and did not abuse its discretion by denying the Yoons' motion for a new trial. This Court should so rule.

II. RESPONDENTS' RESTATEMENT OF THE ISSUES

The Jungs respectfully submit that Appellants' Opening Brief, properly understood, presents the following issues for this Court:

1. Did the Yoons fail to assign error to most (if not all) of the trial court's findings of fact, rendering those findings verities on appeal?
2. Did the Yoons waive most of their evidentiary challenges by failing to make timely objections at trial?
3. Were any evidentiary errors that were not waived harmless error?
4. Even if not treated as verities on appeal, is there substantial evidence in the record to support the trial court's findings of fact?
5. As a matter of law, does the finding that the Yoons acted with malice support the award of $75,000 in general damages?
6. Is there substantial evidence in the record that supports the award of $57,682.64 in special damages?
7. Is proof of reputational damage necessary to recover for defamation, and did the Jungs fail to provide such proof?

Each and every one of these issues can and must be resolved in favor of the Jungs, and in favor of affirming the trial court's judgment.

III. RESPONDENT'S RESTATEMENT OF THE CASE

All of the principal actors in this case, including Mr. and Mrs. Yoon, Mr. and Mrs. Jung, and Mr. Chung Dong, a witness, are or were members of the Tacoma Good News Missionary Church. RP (3/21/11) at 6:23-25; 35:14-19. The church has approximately 70-80 members predominantly drawn from the area's Korean community. RP (3/21/11) at 36:4-7.

1. The Yoons publicize their claim that Mrs. Jung is a prostitute

On March 18, 2009, Mrs. Yoon went to the grocery store owned by the Jungs, and proceeded to spend two hours telling Mr. Jung that his wife was effectively a prostitute. RP (3/21/11) at 8:22 to 10:25. Specifically, according to Mr. Jung,

> Mrs. Yoon came to the store . . . and she told me about my wife having an affair with so many people, men in Tacoma area. And then she said my wife slept with the other guys and then my wife doing some money loaning to somebody else, and then he take it and pay back to my wife and she ask to sleep with them. Then she has a baby with some other guy . . . .

RP (3/21/11) at 10:7-13; see also RP (3/21/11) at 9:5-10. Mrs. Yoon also told Mr. Jung that his wife had aborted the baby she had conceived by another man. RP (3/21/11) at 9:11-14; 10:16-20.

At some point not long thereafter, Mr. Yoon paid a visit to Mr. Chung Dong, another church member. RP (3/21/11) at 36:15-17.

According to Mr. Dong, Mr. Yoon used the visit to "explain about Mrs. Jung," to the following effect:

> [S]he's kind of a hooker and she had some kind of an affair with some person in Tacoma and she pregnant and she went to Korea and she had a surgery because of it. Abortion for—that's what he told me.

RP (3/21/11) at 37:11-16. Mr. Yoon also explained that "he doesn't want the [Good News] church to exist in Tacoma" and warned that "I'm going to close that church and please don't get involved." RP (3/21/11) at 37:3-4 and 43:8-10.

2. The effect of the Yoons' statements on the Jungs

Even though he did not believe Mrs. Yoon's allegations about his wife, Mr. Jung was still profoundly shocked. RP (3/21/11) at 12:11-17 and 12:20-25. When later that day Mr. Jung told his wife about what Mrs. Yoon had told him, the effect on his wife was "a hundred times" worse. RP (3/21/11) at 13:15-16. As Mrs. Jung described her reaction to the allegations, she "felt like . . .[she] was dying." RP (3/22/11) at 35:5.

The trauma to the Jungs was aggravated by the fact that on March 19, 2009—the day after her visit to the Jungs' store—Mrs. Yoon went to the Jungs' home in search of Mrs. Jung. RP (3/23/11) at 55:21 to 59:8. One of the Jungs' minor children answered the door, and informed Mrs. Yoon that neither of his parents was home. Despite knowing that there was no adult at home, Mrs. Yoon entered the house. RP (3/23/11) at 56:8 to 56:10. The child called his mother on the telephone, who told Mrs.

Yoon to leave. RP (3/23/11) at 58:25 to 59:3. Both the child and Mrs. Jung also called 911. RP (3/22/11) at 51:15-18.

Believing that their children needed to be protected, the Jungs promptly moved from Tacoma to Bellevue, leaving their Tacoma home vacant. RP (3/22/11) at 35:19-35. The move did not prevent Mrs. Jung from experiencing continued emotional distress caused by the Yoons' allegations. RP (3/22/11) at pp. 36-40, 43-49. Mrs. Jungs' physical symptoms included nightmares, headaches, nausea, and a facial rash or pimples. RP (3/22/11), at pp. 36-37. See also Exhibits 11-19. As of the date of trial, Mrs. Jung remained reluctant to be out in public in the Korean community, because of her fear that people might repeat the Yoons' rumors. RP (3/22/11) at 56:22 to 57:20. Moreover, the allegations and their aftermath strained the relationship between Mr. and Mrs. Jung. RP (3/22/11) at 52:7-10; 60:20 to 61:8. In particular, Mrs. Jung worried about the burden the events placed on her children, stating that "my children may feel the loving time between husband and wife was in the past." RP (3/22/11) at 61:7-8.

3. Proceedings in the trial court.

The Jungs filed suit against the Yoons in Pierce County Superior Court on April 10, 2009. CP 3. Shortly thereafter, the Yoons submitted a response that conceded that Mrs. Yoon had visited both the Jungs' store on March 18, 2009 and the Jungs' home on March 19, 2009. Ex. 9, ¶¶ 2-3, 6. According to the response, "Co-Defendant Hyun Suk Yoon felt personally responsible to inform the Plaintiff that bad rumors are

surrounding their marriage because Hyun Suk Yoon, at the time, was a church member of the same church Plaintiffs were attending." Ex. 9, ¶2.

On March 21, 2011, the matter proceeded to a bench trial in Pierce County Superior Court. Although the Yoons had previously been represented by counsel, by the time of trial they were *pro se*. RP (3/21/11) at 1. The fact that the Yoons were *pro se* combined with the need for translation to give parts of the proceedings an awkward flow. See, e.g., RP (3/23/11) at pp. 72:9 to 73:6. However, the trial court judge spent considerable effort to inform the Yoons regarding the proper presentation of evidence, and at least once recessed the matter early to give the Yoons extra time to prepare. See, e.g., RP (3/21/11) at 19:17 to 22:5; 23:21 to 24:16; 28:7 to 29:7; RP (3/22/11) at 71:21 to 72:12.

During the trial, the judge heard testimony from Mrs. Yoon in which she flatly contradicted her prior written response by denying that she had gone to Mr. Jung's store to discuss "rumors" about Mrs. Jung. RP (3/23/11) at p. 65:14 to 66:18; 77:19 to 77:24. In fact, Ms. Yoon testified that she had absolutely no reason to think badly of Mrs. Jung's character. RP (3/24/11) at 30:16-21. Far from going to the Jungs' store to defame Mrs. Jung (or even to discuss "rumors"), Mrs. Yoon maintained that she went to the store to discuss "church issues." RP (3/23/11) at p. 36:5. Attempting to explain the nature of the purported church business that took her to Mr. Jung's store, Mrs. Yoon told a complicated story focusing on her disapproval of her own adult daughter's personal choices. RP (3/23/11) at pp. 37:11 to 47:24; RP (3/24/11) at pp. 33:11 to 39:15. Mrs.

Yoon's disapproval of those choices apparently metastasized into a hostility to the church she held responsible for them. RP (3/24/11) at pp. 40:3 to 41:15.

On the other hand, the trial court heard from Mr. Jung, Mrs. Jung, and Mr. Chung Dong with testimony as previously summarized. *Supra,* pp. 3-5. Thus, on the critical issues regarding what sort of statements the Yoons had made to others about Mrs. Jung, the trial had to weigh the credibility of the Mr. and Mrs. Jung, and Mr. Chung Dong, on the one hand, against that of Mr. and Mrs. Yoon, on the other. Moreover, it had to do so in a context where the Yoons' testimony at trial contradicted their prior written response, and where Mrs. Yoon admitted she had no reason to make derogatory statements about Mrs. Jung. RP (3/24/11) at 30:13-21.

At the conclusion of the trial, Judge Katherine Stolz made oral findings and conclusions that were subsequently embodied in written Findings of Fact and Conclusions of Law. RP (3/24/11) at 53:25 to 57:6; CP 41-45. The court explicitly found that Mrs. Yoon "was a liar" (RP 3/24/11 at 56:17); that "Defendants knowingly made false inflammatory and vicious statements" about Mrs. Jung (RP 3/24/11 at 54:5-7; CP 42, FOF No. 2); and that Mrs. Jung "suffered serious injury [as a] . . . result of the defamation campaign" by Mrs. Yoon. CP 42, FOF No. 9.

The trial court subsequently entered judgment for the Jungs in the amount of $147,799.99, consisting of $75,000 in general damages, $57,102.64 in special damages, $11,187.50 in attorney's fees, and $4,509.85 in costs. CP 46-48. Represented once again by counsel, the

Yoons made a timely Motion for New Trial (CP 17-40), which the trial court denied (CP 53-54). This appeal followed.

IV. SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying the Yoon's motion for a new trial. Both that motion and the Yoons' appeal are based in large part on the contention that because the Yoons represented themselves at trial they are entitled to a "do-over." This is of course not the law: *pro se* litigants are held to the same standard as represented parties.[1] Whether represented or *pro se*, parties who fail to make timely objections in the trial court to evidentiary or other rulings waive those issues on appeal.[2] Moreover, even though the Yoons are now represented by counsel, they have still failed to assign error to any of the trial court's findings and conclusions, rendering them verities on appeal.[3] Finally, even if Appellants' Brief is read as adequately challenging any of the trial court's findings or conclusions, those conclusions were in fact supported by substantial evidence in the record and well founded in law. In particular, the trial court's finding that the Yoon's acted maliciously in

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[1] *See, e.g., West v. State, Washington Ass'n of County Officials*, 162 Wn. App. 120, 137 note 13, 252 P.3d 406 (2011).

[2] *See* E.R. 103 (noting that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context"); *and* RAP 2.5(a).

[3] *See, e.g., Vern Sims Ford, Inc. v. Hagel*, 42 Wn. App. 675, 681, 713 P.2d 736 (1986).

defaming Mrs. Jung is well supported in fact. In turn, as a matter of law that finding supports the trial court's award of general damages.[4] Accordingly, this Court should affirm.

V. ARGUMENT

1. Standard of Review

The Yoon's solitary assignment of error asserts that "[t]he trial court erred in entering its order of June 10, 2011, denying Appellant's Motion for a New Trial."[5] This Court reviews a trial court's decision to grant or deny a motion for new trial for abuse of discretion.[6] A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons.[7]

In the event this Court also regards the Yoons' appeal as having properly challenged any of the trial court's findings and conclusions, then for that purpose it should follow a two-step process of review. First, this Court "must determine if the trial court's findings of fact were supported by substantial evidence in the record."[8] If they are, this Court "must next decide whether those findings of fact support the trial court's conclusions

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[4] *Id.*, 42 Wn. App. at 741 (holding that "[s]ince actual malice was shown in the instant case, the award of presumed damages did not violate the First Amendment").
[5] Appellants' Brief, p. 4.
[6] See, e.g., *Lian v. Stalick,* 106 Wn.App. 811, 824, 25 P.3d 467 (2001).
[7] *Stalick,* 106 Wn. App. at 824 (quoting *Kohfeld v. United Pacific Ins. Co.,* 85 Wn.App. 34, 40, 931 P.2d 911 (1997)
[8] *Landmark Dev. v. City of Roy,* 138 Wn.2d 561, 573, 980 P.2d 1234 (1990) (citing *Willener v. Sweeting,* 107 Wn.2d 388, 393, 730 P.2d 45 (1986))

of law."[9] Substantial evidence is that which would persuade a fair-minded, rational person of the truth of the declared premise.[10] This Court reviews conclusions of law de novo, even if they are mislabeled as findings of fact.[11]

2. The Yoons' failure to assign error to the trial court's findings of fact at the very least severely limits the scope of this Court's review.

Under RAP 10.3(a)(4), an appellant's brief must contain "[a] separate concise statement of each error a party contends was made by the trial court." Moreover, RAP 10.3(g) provides that "[a] separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto."

Here, the Yoons' single assignment of error simply states that the trial court erred by denying their motion for a new trial.[12] Critically, the Yoon's brief has no separate assignment of error for *any* of the trial court's findings of fact.[13] Read with some charity, the "associated issue"

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[9] *Id.*
[10] *World Wide Video, Inc. v. City of Tukwila,* 117 Wn.2d 382, 387, 816 P.2d 18 (1991), cert. denied, 503 U.S. 986, 112 S.Ct. 1672, 118 L.Ed.2d 391 (1992).
[11] *Willener,* 107 Wn.2d at 394; *Bryant v. Palmer Coking Coal Co.,* 86 Wn. App. 204, 210, 936 P.2d 1163.
[12] Appellants' Brief, p. 4.
[13] The Yoons can not remedy this oversight in their forthcoming Reply Brief, because an issue raised and argued for the first time in a reply brief

discloses two types of claimed error: 1) allegedly erroneous evidentiary rulings regarding hearsay, leading questions, lack of foundation, and irrelevant testimony; and 2) "lack of legal proof of damages."[14] However, no error is assigned to any specific trial court finding of fact. In particular, the Yoons do not assign error to the trial court's findings that: (1) "Defendants knowingly made false inflammatory and vicious statements" about Mrs. Jung; (2) Mrs. Yoon's "visits to [Mr. Jung's] grocery store and to the Plaintiffs' house . . . was [sic] not lawful church business but part of [Mrs. Yoon's] vendetta against the church;" (3) Mr. Yoon's "trip to [Mr. Chung Dong] . . . was again [for the] purpose of spreading vicious and false rumors;" and (4) Mrs. Jung "suffered serious injury . . . [as a] result of the defamation campaign" by Mrs. Yoon.[15]

The Yoons' failure to assign error to these finding renders their appeal largely, and possibly entirely, moot. This is because a plaintiff in a defamation action must establish four elements: "(1) falsity, (2) an unprivileged communication, (3) fault, and (4) damages."[16] Here, the trial court's unchallenged findings of fact are verities on appeal.[17] Together,

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is too late to warrant consideration. *See, e.g., In re Marriage of Sacco,* 114 Wn.2d 1, 5, 784 P.2d 1266 (1990).

[14]Appellants' Brief, p. 4.

[15] CP 42, findings of fact No.'s 2, 7, 8, and 9.

[16] *See, e.g., Valdez-Zontek v. Eastmont School District*, 154 Wn. App. 147, 157, 225 P.3d 339 (2010) (citing to *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005). Reference to the more expansively described elements discussed in *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 588, 943 P.2d 350 (1997) would not change the analysis that follows.

[17]*See, e.g., Vern Sims Ford, Inc.* 42 Wn. App. at 681.

they establish all of the necessary elements of defamation: Defendants "knowingly made false inflammatory and vicious statements" about Mrs. Jung (FOF No. 1, at CP 42—going to falsity, malice, and lack of privilege[18]); they did so not as part of any "lawful . . .business but as part of . . . [a] vendetta against the church (FOF No. 7, at CP 42—going to lack of privilege); and in doing so caused Mrs. Jung "serious injury" (FOF No. 9, at CP 42—going to damages). If this Court decides that the Yoons'

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[18] In this appeal, the Yoons make no argument at all about privilege, so any discussion of it should be strictly unnecessary. For the sake of completeness, however, the Jungs submit that a privilege to publish a defamatory communication can be either absolute or qualified. *See, e.g., Taskett v. KING Broadcasting Co.*, 86 Wn.2d 439, 458, 546 P.2d 81 (1976) (Horowitz, dissenting) (summarizing the law of privilege regarding defamation). The Yoons were clearly not absolutely privileged to spread vicious lies about Mrs. Jung, because "[a]bsolute privilege is usually confined to cases in which the public service and administration of justice require complete immunity. Legislatures in debate, judges and attorneys in preparation or trial of cases and executive or military personnel, when within the duties of their offices, are frequently cited examples." *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 476, 564 P.2d 1131 (1977). As for any potential qualified privilege, it is defeated by the trial court's unchallenged finding of malice. *See, e.g., Demopolis v. People's Nat. Bank of Washington,* 59 Wn. App. 105, 114, 796 P.2d 426 (1990) (noting that "[a] qualified privilege protects the maker from liability for a defamatory statement unless it can be sown that the privilege was abused . . . . The burden of establishing an abuse of a qualified privilege rests on the defamed party, *who must show that the speaker acted with actual malice. . . .*") (emphasis added). Here, the Jungs have made that showing, as established by the trial court's unchallenged finding of fact No. 2. CP 42, FOF No. 2.

reference to "lack of proof of legal damages" in their statement of the "Issue Pertaining to Assignment of Error" did *not* adequately preserve a claim of error with regard to damages, then it should conclude its analysis here, and affirm on the basis of the inadequate assignment of error in Appellants' Brief.

Even if this Court concludes that the Yoons *did* adequately assign error to the trial court's findings regarding damages, the Jungs respectfully submit that the other elements of defamation—falsity, faulty, and lack of privilege—must be taken as established beyond challenge. This has the immediate consequence that all of the Yoons' evidentiary objections that do not relate to damages are moot, or more precisely, can at most be only harmless error. Error without prejudice is not grounds for reversal, and error will not be considered prejudicial unless it affects, or presumptively affects, the outcome of the trial.[19] Since the ultimate findings of fact to which they relate must be treated as verities, evidentiary issues that bear only on questions of falsity, fault, or privilege can't affect the outcome of the trial and hence provide no basis for reversal.[20]

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[19] *See, e.g., Brown v. Spokane County Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 196, 668 P.2d 571, 576 (1983).

[20] *See, e.g., Browns v. Quick Mix Co., Division of Koehring Co.* 75 Wn.2d 833, 454 P.2d 205 (1969) (holding that admission of evidence on uncontested matter is not prejudicial error). This is true in particular of the Yoons' objections to Exhibits 7 and 9. Those exhibits are only relevant to issues of falsity, fault, and lack of privilege, not damages. Because Appellants' Designation of Clerks' Papers did not designate any trial exhibits, the Jungs have designated them in their Respondents'

3. The Yoons have waived evidentiary objections they did not raise at trial, and have failed to present any argument at all that any preserved errors were prejudicial.

There are additional reasons—independent of those set forth in Section 2 above—why this Court should disregard the Yoon's evidentiary objections. First of all, the Yoons failed to raise most of their evidentiary objections during the trial. "It is almost an axiom of trial practice that counsel may not gamble on the result of the trial and then, when defeated, claim the right to a new trial for matters that counsel failed to object to in the course of the trial."[21] This axiom is rooted in the both the Washington Rules of Evidence and the Superior Court Civil Rules. Under the Rules of Evidence:

> Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, *and . . . a timely objection or motion to strike is made*, stating the specific ground of objection, if the specific ground was not apparent from the context.

ER 103 (emphasis added). Under the Rules of Civil Procedure, a motion for a new trial may be granted if there was an "[e]rror in law occurring at the trial *and objected to at the time* by the party making the application." CR 59(a)(8) (emphasis added).

Both in their Motion for a New Trial and on appeal, the Yoons attempt to raise objections to the trial court's handling of evidence that they did not present to the trial court. Although the Yoons now complain

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Supplemental Designation of Clerks' Papers, a copy of which is attached to this Respondents' Brief as Appendix A.

[21] 4 *Wash. Prac.*, Rules Practice CR 59 (5th ed.)

at great length about purported errors involving repeated questions (see, e.g., Appellants' Brief, pp. 7-8, 11), leading questions ((see, e.g., Appellants' Brief, p. 11), irrelevant testimony ((see, e.g., Appellants' Brief, p. 12); and hearsay (see, e.g., Appellants' Brief, p. 8), they do not even attempt to argue that they raised these objections to the trial court. The record conclusively shows that they did not. RP (3/21/11) 1 to RP (3/24/11) at 50. As a consequence, all such after-the-fact objections are waived.

The fact that the Yoons were *pro se* during trial does not change this result. Unfortunately for the Yoons, "the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws."[22] This is not a harsh rule, particularly in a case such as this where almost two years elapsed from the date of the Complaint to the date of trial, and where the Yoons were at one time represented by counsel.[23] Any other rule would encourage litigants to proceed *pro-se* as a way of potentially gaining two bites at the apple, and could place trial

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[22] *In re Marriage of Wherley,* 34 Wn. App. 344, 349, 661 P.2d 155 (1983), *review denied,* 100 Wn.2d 1013 (1983). See also *Westberg v. All–Purpose Structures, Inc.,* 86 Wn. App. 405, 411, 936 P.2d 1175 (1997) (noting that "[a] trial court must hold pro se parties to the same standards to which it holds attorneys").

[23] The Complaint in this matter was filed on April 10, 2009. CP 3 See *also* Appellants' Brief, p. 6 (noting that "Appellants had previously retained an attorney, but that attorney withdrew long before the trial").

courts under undue pressure to act with improper partiality as *de facto* counsel for unrepresented parties.[24]

Secondly, the Yoons have *nowhere* presented any argument that errors that were properly preserved were prejudicial. What argument the Yoons offer about error is largely—and improperly—presented in their Statement of the Case.[25] Those arguments run exclusively to show that error was made, not that it was prejudicial or in any way adversely affected the trial's outcome. However, an erroneous ruling on evidence provides a basis for reversal only if it was prejudicial.[26] The Yoons failure to argue that the alleged errors were prejudicial, let alone to cite any authority in support of such a claim, constitutes an effective waiver of all of their evidentiary objections.[27]

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[24] See, e.g., *Edwards v. Le Duc*, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010) (noting the "bounds of impartiality" that properly constrain a judge during trial, and in particular a trial involving unrepresented parties).

[25] See Appellants Brief, pp. 6-22. Compare RAP 10.3(a)(5), calling for the statement of the case to be "without argument."

[26] *See, e.g.,* RCW 4.36.240, which states that "[t]he court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect." *See also Brown v. Spokane County*, 100 Wn.2d at 196.

[27] See, e.g., *Verstraelen v. Kellog*, 60 Wn.2d 115, 121, 372 P.2d 543 (1962) (noting that when no argument or authority are submitted in support of a contention, an appellate court will not consider it).

4. Because there is substantial competent evidence in support of each of the trial court's findings, any alleged evidentiary errors are harmless.

The trial court's Exhibit Record shows the Yoons objected to Exhibits 7, 9, 17-20, and 23.[28] CP 14-15. If—despite the arguments presented in Sections 2 and 3 above—this Court reaches the merits of these objections, or considers others raised for the first time on appeal, it should nonetheless conclude that any error by the trial court was harmless. This is because erroneous rulings admitting evidence are disregarded on appeal if there is substantial competent evidence to support the court's findings.[29] That was the case here.

Recall that the four essential elements of a claim for defamation are falsity, fault, lack of privilege, and damages. The trial court found that "Defendants knowingly made false inflammatory and vicious statements" regarding Mrs. Jung. CP. 42. Competent evidence to support the finding that the Yoons made defamatory statements can be found in the testimony of both Mr. Jung and Mr. Dong.[30] Each of these witnesses testified that

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[28] On appeal, however, the Yoons only refer to their objections to Exhibits 7 and 17. See Appellants' Brief at p. 14 and p. 17. This Court could certainly take this as a waiver of the Yoons' other objections. The brief argument that follows assumes that no such waiver is found.

[29] See 5 Wash. Prac., Evidence Law and Practice § 103.23

[30] The Yoons appear to object to Mr. Dong's testimony, on the grounds that it was not adequately revealed in the Jungs' Complaint. See Appellants' Brief, p. 10. The Yoons cite no authority for this proposition, and in light of the notice pleadings of CR 8, it makes no sense to say that testimony can be excluded because it wasn't referenced in the complaint. Since Mr. Yoon was clearly a named defendant, and participated in trial, there was also no unfairness to him in allowing Mr. Dong to testify about

one of the Yoons came to them and told them in person that Mrs. Jung was a prostitute. In concluding that the Yoons did in fact make the statements attributed to them, the trial court could also properly take into account the fact that the Yoons initially filed a written response in which they acknowledged discussing "rumors" about Mrs. Jung, but then during trial attempted to deny this admission. As for the falsity of Mrs. Yoon's allegations, the trial court could rely on the testimony of Mr. and Mrs. Jung, and on that of Mrs. Yoon herself.[31]

With regard to fault and specifically malice, the Court properly had before it competent evidence in the form of Mrs. Yoon's admission that she had no reason to think poorly of Mrs. Jung's character. Likewise, the Court properly could consider Mrs. Yoon's testimony about her hostility to the church, a hostility which provides context for her actions and at least circumstantial support for the trial court's conclusion that Mrs. Yoon acted with actual malice. On the same point, the court also had the testimony of Mr. Dong, relating Mr. Yoon's account of his and his wife's campaign against the church. Finally, the trial court also properly considered the testimony of both Mrs. Jung and Mrs. Yoon concerning

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statements made by Mr. Yoon, even though the Complaint only references statements by Mrs. Yoon.

[31] See, e.g., RP (3/21/11) at 13:21 to 14:6 (Mr. Jung's testimony); RP (3/22/11) at 34:19 to 35:3 (Mrs. Jung's testimony); RP (3/24/11) at 30:13 to 30:21. *See also Valdez-Zontek v. Eastmont School District,* 154 Wn. App. 147, 159, 225 P.3d 339 (2010) (testimony of alleged participants in affair denying affair sufficient to show that allegation was provably false).

Mrs. Yoon's visit to the Jung home the day after she had spent two hours telling Mr. Jung his wife was a prostitute.

As for the element of privilege, the trial court found that Mrs. Yoon did not act on "lawful church business" but instead as part of "vendetta against the church." CP 42, FOF No. 7. This finding was more than adequately supported by the testimony of Mrs. Yoon herself, supplemented by that of Mr. Dong.[32]

That leaves only the element of damages. The trial court found that Mrs. Jung "suffered serious injury" as a result of the Yoons damages. CP 42, FOF No. 9. On the issue of special damages, the court could rely on the testimony of Mr. and Mrs. Jung about why they felt they had to move from their home, and the costs imposed on them by doing so.[33] On appeal, the Yoons have abandoned any objection to Exhibit 23, the Jungs' lease of their new residence. By any measure, then, there was competent evidence in the record to support an award of special damages.[34]

With regard to general damages, the trial court properly heard the testimony of both Mr. and Mrs. Jung concerning how the defamatory statements had affected their lives together, and that of Mrs. Jung more

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[32]As previously discussed, the fact that the trial court found the Yoons acted with malice defeats any claim of conditional privilege. As a matter of law, there is no basis for a claim of absolute privilege, and the Yoons have never raised such a claim.

[33] See, e.g., RP (3/21/11) at 15:21 to 16:23; RP (3/22/11) at 50:10 to 56:21.

[34] Whether the court correctly calculated special damages is a separate issue, addressed below in Section 6.

particularly concerning the devastating impact of those statements on her mental well-being.[35] Also, there was no objection made to Exhibits 11-16. CP 15. This testimony and these exhibits constitute competent evidence supporting the trial court's findings. Moreover, as argued below in Section 5, the fact that the trial court found the Yoons to have acted with malice provides an adequate foundation for an award of presumed damages. This legal point should moot any concerns this Court may have for any lack of foundation for medical records the trial court admitted over the Yoons' objections.

Because each of the trial court's factual findings is adequately supported by substantial, competent evidence, any alleged errors by the trial court in admitting evidence that were properly preserved and not waived on appeal are nonetheless harmless.

5. The fact that the Yoons acted with malice supports an award of general, or presumed, damages.

"Washington law permits the award of presumed damages once actual malice is shown."[36] "Presumed damages" are a form of general damages, "recoverable without proof of injury" for what the law presumes to be "the natural and probable consequence of the defendants' conduct"

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[35] See particularly RP (3/21/11) at 13:14 to14:23; RP (3/22/11) at 34:14 to 36:11; 46:20 to 48:15; 52:7-10; 56:22 to 57:20; and 60:20 to 61:8.

[36] *Vern Sims Ford, Inc. v. Hagel*, 42 Wn. App.675, 681, 713 P.2d 736 (1986) (citing to *Taskett v. KING Broadcasting Co.*, 86 Wn.2d 439, 447, 546 P.2d 81 (1976)). *See also Caruso v. Local Union No. 690 of Intern. Broth. of Teamsters*, 100 Wn.2d 343, 354, 670 P.2d 240 (1983) (finding error in allowing "the jury to presume damages *when liability was based on negligence, not actual malice*") (emphasis added).

when there is defamation *per se*.[37] The category of statements that qualify as "defamation per se" includes those that "create[] the imputation of unchastity" to a female plaintiff.[38]

Here, there is no doubt that the Yoons' statements that Mrs. Jung is a prostitute constitute defamation per se. Similarly, the trial court's finding that the Yoons "knowingly made false inflammatory and vicious statements" about Mrs. Jung, which is a verity on this appeal, establishes

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[37] *Taskett*, 86 Wn.2d at 459 (Horowitz, dissenting). *See also Maison de France, Ltd v. Mai Oui!, Inc.*, 126 Wn. App. 34, 54, 108 P.3d 787 (2005); and *Waechter v. Carnation Co.*, 5 Wn. App. 121, 126-127, 485 P.2d 1000 (1971) (holding that "[i]t is the rule that where the defamation is actionable per se and neither truth nor privilege is established as a defense, the defamed person is entitled to substantial damages without proving actual damages"). *See also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349, 94 S. Ct. 2997 (1974) (noting that "[t]he common law of defamation is an oddity of tort law, for it allows recovery of purportedly compensatory damages without evidence of actual loss"). See also *1 Sack on Defamation*, §10:3.3 (4th ed. 2010) (noting that at common law, "[t]he jury typically was charged that general damages consisted of 'a sum which, as far as money can do it, will compensate the plaintiffs for the injuries which have resulted directly and [are] a natural consequence of the statements referred to in' the offending communication").

[38] *Valdez-Zontek*, 154 Wn. App. at 165. *See also Caruso*, 100 Wn.2d at 353-54 (noting that "[a] defamatory publication is libelous per se (actionable without proof of special damages) if it . . . exposes a living person to hatred, contempt, ridicule, or obloquy . . . ", and mentioning a "charge . . . of unchastity in a woman" as a clear example of libel per se). *See also Restatement (2nd) of Torts*, § 574, establishing that "[o]ne who publishes a slander that imputes serious sexual misconduct to another is subject to liability to the other without proof of special harm." The Restatement's language is obviously less gender-specific than that of *Valdez-Zontek* and *Caruso*, but it clearly supports the claim that to call Mrs. Jung a prostitute constituted defamation per se.

that the Yoons acted with "actual malice."[39] With per se defamation and actual malice established, it follows that the Jungs are "entitled to substantial [presumed or general] damages without proving actual damages."[40] Accordingly, the trial court properly used its discretion in weighing the evidence of reputational and emotional injury to the Jungs and awarding them $75,000 in general damages.[41]

Given the significance of constitutional limitations on defamation liability imposed by the United States Supreme Court starting with *New York Times Co. v. Sullivan*, it is important to point out that awarding the Jungs presumed damages does not offend against the First Amendment.[42] In *New York Times*, the U.S. Supreme Court decided that public officials could not recover for defamation unless they proved the defendant acted with "actual malice."[43] It extended this rule to "public figures" in *Curtis Publishing Co. v. Butts*.[44] Then, in *Rosenbloom v. Metromedia, Inc.*, a

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[39] "Actual malice is knowledge of the falsity or reckless disregard of the truth or falsity of the statement." *Vern Sims Ford,* 42 Wn. App. at 680-81.
[40] *Waechter,* 5 Wn. App. at 126-127.
[41] CP 44, ¶ 18, RP (3/24/11) at 56:16 to 57:4. *See also Maison de France*, 126 Wn. App. at 55 (remanding "for the trial court to exercise its discretion in the award of presumed damages").
[42] *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). The summary of the development of U.S. Supreme Court precedent given in this and subsequent paragraphs draws heavily on *Taskett*, 86 Wn.2d at 442-43.
[43] *New York Times*, 376 U.S. at 279-80 (holding that "a public official . . . [may not] recover[] damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."
[44] *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975 (1967).

plurality of the Supreme Court suggested that the actual malice standard applied to all defamation plaintiffs, regardless of whether they were public officials, public figures, or private individuals, at least in matters involving public concern.[45] None of these cases hold or even suggest that presumed damages are inappropriate *if actual malice is proven.*[46]

The Washington State Supreme Court followed these developments, and in 1971 it adopted the position of the *Rosenbloom* plurality in *Miller v. Argus Publishing Co.*[47] Like *Rosenbloom*, *Miller* neither stated nor implied that presumed damages were inappropriate if actual malice was proven.[48] Then, in *Gertz v. Robert Welch, Inc.*, decided in 1974, the U.S. Supreme Court took a step back from the protections afforded defamation defendants by *Rosenbloom.*[49] In a case involving a matter of public concern, it held that a *private figure* plaintiff need *not* establish malice to recover damages. Instead, it sufficed if a

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[45] *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S.Ct. 1811 (1971).
[46] *See, e.g., New York Times*, 376 U.S. at 283-84 and note 24 (strongly implying that both punitive and presumed damages pass constitutional muster if actual malice is proven, even in a case involving a public official and a matter of public concern).
[47] *Miller v. Argus Publishing Co.* 79 Wn.2d 816, 490 P.2d 101 (1971).
[48] Indeed, *Miller* implicitly endorses the award of presumed damages if the defendant acted with malice, as it approved the following jury instruction:

> If your verdict in this case is for the plaintiff and if you decide that the articles were libelous Per se as I have herein instructed you, *I further instruct you that in fixing damages it is not necessary that the plaintiff produce evidence of actual or special damages but that he is entitled to an award of damages because the law presumes that damages flow from a libel Per se.*

Miller, 79 Wn.2d at 820, note 3 (emphasis added).
[49] *Gertz*, 418 U.S. 323, 94 S.Ct. 2997 (1974).

private figure plaintiff established negligence. It balanced this retreat from universal application of the *New York Times* standard by also holding that on a showing of negligence, a defamation plaintiff could recover only actual, and not presumed, damages.[50] However, *Gertz* also *at least* implied that presumed damages *could* be awarded if actual malice were shown.[51]

In *Taskett*, the Washington Supreme Court followed *Gertz*, but expressly clarified that "damages may be presumed upon a finding of 'actual malice.'"[52] Subsequently, in *Caruso*, the State Supreme Court effectively supported this point by finding error in a jury instruction that "allowed the jury to presume damages *when liability was based on negligence, not actual malice.*"[53]

To date, the last word from the U.S. Supreme Court on Constitutional constraints on presumed damages in defamation cases

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[50] *Gertz*, 418 U.S. at 349 (holding that "[i]t is necessary to restrict defamation plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth to compensation for actual injury) (emphasis added).

[51] *Id.*, (holding that "the States may not permit recovery of presumed . . . damages, *at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth*") (emphasis added). See also 1 *Sack on Defamation*, § 10:2 (4th ed. 2010) (noting that *Gertz* has "little or no impact . . . on any case in which *New York Times* 'actual malice' is proved; the opinion seems to exclude such cases from its coverage").

[52] *Taskett*, 86 Wn.2d at 447 (1976).

[53] *Caruso,* 100 Wn.2d at 354 (emphasis added).

comes from *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*[54] In *Dun & Bradstreet*, the Supreme Court considered a private party plaintiff in a matter of private, not public concern. In this particular combination of circumstances—private plaintiff, and a matter of only private concern—the U.S. Supreme Court held that "the state interest adequately supports awards of presumed and punitive damages—*even absent a showing of malice.*"[55] As of the date of Respondents' Brief, the Washington Supreme Court has not taken a position on this aspect of *Dun & Bradstreet.*[56] However, in *Maison de France*, the Washington State Court of Appeals held that "under *Dun & Bradstreet*, where no matters of public concern

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[54] *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S.749, 105 S.Ct. 2939 (1985).

[55] *Id.*, 472 U.S. at 761. See also *Maison de France*, 126 Wn. App. at 53. Although giving a generally accurate account of the relationship between *Gertz* and *Dun & Bradstreet*, Maison *de France* mistakenly describes the plaintiff in *Gertz* as a public figure, and also mistakenly describes the *Dun & Bradstreet* opinion as hinging on the fact that the *defendant* was not a public figure. Both *Gertz* and *Dun & Bradstreet* involve *plaintiffs* who were private figures, and are distinguished by the fact that *Gertz* involved a matter of public concern, whereas *Dun & Bradstreet* did not.

[56] *But see Richmond v. Thompson*, 130 Wn.2d 368, 387, 922 P.2d 1343 (1996) (noting that "the United States Supreme Court has held states may permit juries to presume damages in defamation actions upon a showing of actual malice") (citing to both *Dun & Bradstreet* and *Gertz*).

are involved, presumed damages to a private plaintiff for defamation *without proof of actual malice* may be available."[57]

Applied to the facts here, the totality of this case law means that there are two independent reasons why the trial court could properly award presumed or general damages to the Jungs. First, under *Gertz, Taskett, Caruso*, and *Vern Sims Ford*, presumed damages are appropriate because the defendant acted with actual malice. Second, because Mrs. Jung is not a public figure, and her fidelity or lack thereof is not a matter of public concern, presumed damages would be appropriate under *Dun & Bradstreet* and *Maison de France* even if the Yoons' fault had only been established as a matter of negligence, rather than malice.[58] Under either rationale, or both, the trial court did not err in awarding the Jungs $75,000 in general damages, even if the trial court should not have considered

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[57] *Maison de France*, 126 Wn. App. at 54 (emphasis added).

[58] The Yoons assert that "since the Plaintiffs argued in their complaint that Mrs. Jung was a public figure" she must be regarded as a public figure. Appellants' Brief, p. 25. The only relevant passage in the Complaint states in its entirety that "The Plaintiff, Hyosun Jung, worked at a Korean radio station as an announcer. As a result she is well known to many people. This defamation or [sic] character causes even more than it would to a private individual." See Complaint, ¶ 9, at CP 5. On its face, this does not amount to pleading that Mrs. Jung was a "public figure" for the purposes of defamation law. Moreover, the trial court heard testimony that Mrs. Jung was not in fact an "announcer" for the radio station, but instead simply a behind- the-scenes employee. RP (3/22/11) at 61:12 to 62:4. In any event, the trial court *did* find that the Yoons acted with malice, so Mrs. Jung's status as a public or private figure matters only to the alternative argument for presumed damages under *Dun & Bradstreet* and *Maison de France.*

certain medical records or other testimony belatedly challenged by the Yoons.

6. The trial court did not err in calculating special damages.

Although not listed in their Assignment of Error or directly mentioned in their Issue Pertaining to Assignment of Error, the Yoons devoted part of the Argument section of their brief to the contention that the trial court erred in its calculation of special damages.[59] If this Court considers this contention despite the Yoons' failure to comply with RAP 10.3(a)(4), the Jungs submit that the proper approach to special damages is set forth below.

First, there is substantial evidence supporting the trial court's finding that the Jungs reasonably felt compelled by the Yoons' actions to move to a new home.[60] Second, the rent the Jungs had to pay on their new home was $2,200 per month for the period from March 30, 2009 to approximately December 31, 2010 and $2,300 per month from approximately January 1, 2011 to the time of trial.[61] Third, the Jung's former residence stood vacant for four months after they moved out, for the period from April 2009 through July, 2009. Fourth, starting in August,

[59] Appellants' Brief, p. 28.
[60] RP (3/22/11) at 51:10 to 52:18; see also RP (3/23/11) at 55:21 to 59:8 (testimony by Mrs. Yoon).
[61] RP (3/22/2011) at 53-56. The dates are approximate, because the testimony simply states that the rent went up by $100 "this year" (i.e., the year of the trial, or 2011). See RP (3/22/11) at 54:2-3.

2009 the Jungs were able to find a renter for their old house, but the renter only pays $1,750 per month, whereas the mortgage was $1,900.[62]

From these facts it follows that the Jungs had to pay $2,200 a month in *additional* housing costs for the period between April and July, 2009, inclusive (because they were paying $2,200 per month for their new home with no offsetting income from renting their old home). Hence, their *additional* housing costs for these four months amount to $8,800. From the end of July, 2009 forward until December 31, 2010, the Jungs had to pay $450 per month in additional housing costs (calculated as $2,200 in new costs less $1,750 in offsetting rent on their old home). $450 per month for 17 months (from August, 2009 through December 2010) amounts to $7,650. From January 1, 2011 to the end of trial on March 24, 2011 the Jungs had to pay $550 in additional housing costs (since the rent they had to pay on their new home increased by $100 to $2,300, while everything else stayed the same). $550 per month for three months equals $1,650. Thus, the total of the Jungs' special damages relating to housing costs *up to the time of trial* amount to $18,100 ($8,800 plus $7,650 plus $1,650).

In addition to this amount for increased housing costs up to the time of trial of $18,100, the trial court properly noted that there would be ongoing additional housing costs "for some period of time."[63] The trial court ultimately awarded a total of $56,400 for additional housing costs,

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[62] RP (3/22/2011) at 56.
[63] RP (3/24/11) at 56:1.

which can be regarded as reflecting $18,100 for additional housing costs up to the time of trial, and $38,300 for future additional housing costs.[64] "An appellate court will not disturb an award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice."[65] The Jungs submit that there is no basis on this record to disturb the trial court's award of special damages.[9]

7. Evidence of damage to reputation is not an element of a defamation claim under Washington State law.

Finally, the Yoons argue that as a matter of law, judgment for the Jungs was improper because they did not prove any damage to Mrs. Jung's reputation.[66] In particular, the Yoons assert that because "[t]his was a defamation case . . . a showing of reputation damage [was required] as one of the essential elements."[67] This is incorrect. In Washington, a defamation plaintiff may recover if a false statement "caused damage to the plaintiff's reputational or other compensable interest."[68] A defamation plaintiff's "compensable interests include not only general damage to reputation, but also emotional distress, bodily harm, and economic (i.e.

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[64] The trial court also awarded $682.64 for incurred counseling costs, bringing the total of its award of special damages to $57,082.64. RP (3/24/11) at 56:14.
[65] *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 849-50, 792 P.2d 142 (1990)
[66] Appellants' Brief, pp. 24-27.
[67] *Id.* at p. 26.
[68] *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 589.

'special') damages."[69] A defamation plaintiff is not prevented from obtaining compensation for personal humiliation, and mental anguish and suffering, "even in the absence of compensable damage to reputation."[70]

The Yoons cite to no authority holding to the contrary. In particular, *Eastwood v. Cascade Broadcasting Co.*, cited at page 25 of Appellants Brief, nowhere holds or implies that reputational damages are a *sine qua non* of a defamation action.[71] *Eastwood* does attempt to describe the theoretical difference between the torts of defamation and placing in a false light by stating that "a defamation action is *primarily* concerned with compensating the injured party for damage to reputation, while an invasion of privacy action is primarily concerned with compensating for injured feelings or mental suffering."[72] Clearly, "*primarily* concerned" does not mean "*exclusively* concerned," and indeed, *Eastwood* goes on to note that the two torts "overlap."[73]

The fact that the Yoons acted with malice is also relevant to the *nature* of the damages the Jungs must prove (as distinct from the quantum

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[69] *Id.* at 589, note 23. See also *Gertz*, 418 U.S. at 350 (noting that "the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering").
[70] *Schmalenberg,* 87 Wn. App. at 589, note 23 (citing to *Time, Inc. v. Firestone*, 424 U.S.448, 460, 96 S.Ct. 958 (1976)).
[71] *Eastwood v. Cascade Broadcasting Co.* 106 Wn.2d 466, 722 P.2d 1295 (1986)
[72] *Id.* at 471 (emphasis added).
[73] *Id.*

of proof required, as discussed above in Section 5). As noted in a leading secondary source summarizing state law

> In the few cases where actual malice has been proven, either by a private individual or by a public figure, the plaintiff's case is much stronger, and *the courts have uniformly held that injury to reputation need not be shown in such a situation.*[74]

Finally, the Jungs submit that the evidence presented at trial supports a finding of damage to Mrs. Jung's reputation, or at least that "the substance of the [defamatory] statement makes substantial danger to [her] reputation apparent."[75] Being called a prostitute clearly poses a substantial danger to any woman's reputation, and the evidence suggested that this is particularly so in the Korean-American community.[76] Mr. Dong's answer, in response to the question of whether he believed Mr. Jung's statements, that "[a]t this time, well, half and half," also supports that there was in fact a detrimental reputational effect.[77] The fact that Mr. Dong and Mr. Chung both also implied or stated that they paid no attention to the allegations—which even in this day and age, is the gentlemanly thing to say—does not require the trial court to accept their testimony on this point, particularly in light of Mrs. Jung's testimony

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[74] Earl L. Kellett, Annotation, "*Proof of Injury to Reputation as Prerequisite to Recovery of Damages in Defamation Action—Post Gertz Cases*," 36 ALR 4th 807 (1985), at 811.
[75] *Mark v. Seattle Times*, 96 Wn.2d 473, 493, 635 P.2d 1081, 1092 (1981). This "substantial apparent danger to reputation" test, and not actual damage to reputation, appears to be the key question about one's reputational interest in Washington.
[76] RP (3/22/11) at 8:10-19.
[77] RP (3/21/11) at 38:11-15.

about how the incident strained her relationship with her husband.[78] Hence, although reputational damage is not a necessary precondition for a plaintiff to recover for defamation, there was substantial evidence in the record here supporting such damage.

VI. CONCLUSION

Both Mr. and Mrs. Yoon told other people that Mrs. Jung was no better than a prostitute. They did so knowing that this allegation was untrue, as part of a vendetta against the church of which they were members. The trial court properly found that the Yoons acted with actual malice, and properly awarded both general and special damages. Even if the Yoons' appeal were not gravely undermined by their procedural errors both in the trial court and on appeal, there is substantial evidence in the record supporting the trial court's findings of fact. Moreover, the trial court did not commit any errors of law, or at the very least did not commit any that were prejudicial and require reversal. Accordingly, this Court should affirm.

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[78] Compare RP (3/21/11) at 38:22 to 39:1 (Mr. Dong stating that he doesn't care about other people's business) with RP (3/22/11) at 8:5-19 (Mr. Dong stating that this sort of rumor can have a devastating impact on a Korean-American family). Compare also RP (3/21/11) at 12:11 to 13:6 (Mr. Jung stating that although he was more shocked by the allegations than by anything else in his life, they had no effect on his relationship with his wife because he didn't believe them) with RP (3/22/11) at 60:20 to 61:11 (Mrs. Jung describing the impact of the events on her relationship with her husband, and concluding by taking the blame herself, saying "I have changed").

Respectfully submitted this 9th day of April, 2012

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Mr. and Mrs. Jung

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CERTIFICATE OF SERVICE

I certify that on April 9, 2012 I sent a copy of the attached Respondent's Brief, with appendix, via email PDF attachment to Leslie Clay Terry, III, attorney for Appellants, at info@clayterrylaw.com. Mr. Terry has agreed to accept service of pleadings in this matter via email.

Dated this 9th day of April, 2012.

David Corbett PLLC

By: _____
David J. Corbett, WSBA# 30895
Attorney for Respondents

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

HAIGEUN JUNG and HYOSUN JUNG, Plaintiffs, vs. SANG TAE YOON and HYUN SUK YOON, Defendants.	The Honorable Katherine Stolz NO. 09-2-07785-7 PLAINTIFFS' / RESPONDENTS' SUPPLEMENTAL DESIGNATION OF EXHIBITS ON APPEAL Ct. of Appeals No. 42342-1-II [Clerk's Action Required]

Plaintiffs (Respondents in Ct. of Appeals No. 43342-1-II) , pursuant to RAP 9.6(a) and 9.7(b), designate the following trial exhibits for transmission to the Court of Appeals, Division I, of the State of Washington, Cause No. 43342-1-II. The clerk shall assemble the trial exhibits designated below and prepare them for transmission to the Court of Appeals.

EXHIBITS

Exhibit No.	Offered By:	Description
4	Plaintiff	Order on Show Cause
7	Plaintiff	Letter by Chung Dong on behalf of the Good News Tacoma Church in Korean
9	Plaintiff	Defendants' reply or answer
11	Plaintiff	Asian Counseling and Referral Service Intake Evaluation and Assessment Form
12	Plaintiff	Asian Counseling and Referral Service Consumer Service Report and Progress Note 6/22/10
13	Plaintiff	Asian Counseling and Referral Service Consumer Service Report and Progress Note 8/3/09
14	Plaintiff	Asian Counseling and Referral Service Consumer Service Report and Progress Note 1/27/10

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Tacoma, WA 98406
(253) 414-5235

15	Plaintiff	Clinical Visit Note by Dr. Lee, Young Ho 5/11/09
16	Plaintiff	Clinical Visit Note by Dr. Lee, Young Ho 5/27/09
17	Plaintiff	Medical Assessments by Dr. Suh
18	Plaintiff	Medical Instruction by Dr. Suh
19	Plaintiff	Progress Notes by Dr. Suh (4)
21	Plaintiff	Receipt from Korea Express (2 pages)
13	Plaintiff	Lease Agreement

A copy of the trial court clerk's Exhibit Record is attached to this Designation of Clerk's Papers and Exhibits as Attachment A

DATED this 6th day of April, 2012.

DAVID CORBETT PLLC

By: _____
David J. Corbett, WSBA # 30895
Attorney for Plaintiffs/Respondents
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on April 6, 2012 I sent a copy of the attached Plaintiffs' / Respondents' Supplemental Designation of Exhibits on Appeal, plus Attachment via email PDF attachment to Leslie Clay Terry III, attorney for Defendants / Appellants, at info@clayterrylaw.com. Mr. Terry has agreed to accept service of pleadings in this matter via email.

DATED this 6th day of April, 2012 at Tacoma, Washington

David J. Corbett

David Corbett PLLC
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Attachment A

09-2-07785-7 36107492 EXRV 03-25-11

FILED
DEPT. 2
IN OPEN COURT
MAR 24 2011
Pierce County Clerk
By DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

HAIGEUN JUNG,
Plaintiff(s) ,

vs

SANG TAE YOON,
Defendant(s)

Cause No 09-2-07785-7

EXHIBIT RECORD

Exhibits received in Vault 3-24-11

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	SUMMONS 09-2-07785-7					
P	2	COMPLAINT 09-2-07785-7					
P	3	ORDER TO SHOW CAUSE 09-2-07785-7					
P	4	ORDER ON SHOW CAUSE 09-2-07785-7	X		Admitted	3/23/11	
P	5	MOTION AND DECLARATION RE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE					
P	6	DECLARATION OF HYOSUN JUNG					
P	7	LETTER BY CHUNG DONG ON BEHALF OF GOOD NEWS TACOMA CHURCH IN KOREAN	X	X	Admitted	3/21/11	
P	8	MEDICAL CERTIFICATION BY LEE DONG JU MD					
P	9	DEFENDANT'S REPLY OR ANSWER 09-2-07785-7	X	X	Admitted	3/23/11	
P	10	PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION WITH CERTIFIED MAIL RECEIPT					

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	11	ASIAN COUNSELING AND REFERRAL SERVICE INTAKE EVALUATION AND ASSESSMENT FORM	X		Admitted	3/22/11	
P	12	ASIAN COUNSELING AND REFERRAL SERVICE CONSUMER SERVICE REPORT AND PROGRESS NOTE 6/22/10	X		Admitted	3/22/11	
P	13	ASIAN COUNSELING AND REFERRAL SERVICE CONSUMER SERVICE REPORT AND PROGRESS NOTE 8/13/09	X		Admitted	3/22/11	
P	14	ASIAN COUNSELING AND REFERRAL SERVICE CONSUMER SERVICE REPORT AND PROGRESS NOTE 1/27/10	X		Admitted	3/22/11	
P	15	CLINICAL VISIT NOTE BY DR LEE, YOUNG HO 5/11/09	X		Admitted	3/21/11	
P	16	CLINICAL VISIT NOTE BY DR LEE, YOUNG HO 5/27/09	X		Admitted	3/21/11	
P	17	MEDICAL ASSESSMENTS BY DR SUH	X	X	Admitted	3/22/11	
P	18	MEDICAL INSTRUCTION BY DR SUH	X	X	Admitted	3/22/11	
P	19	PROGRESS NOTES BY DR SUH (4)	X	X	Admitted	3/22/11	
P	20	RECEIPT FROM A-1 MAINTENANCE SERVICE	X	X			
P	21	RECEIPT FROM KOREA EXPRESS (2 PAGES)	X		Admitted	3/22/11	
P	22	RECEIPTS FROM DR SUH (2 PAGES)					
P	23	LEASE AGREEMENT	X	X	Admitted	3/22/11	